

Appendix E – Industry Review Comment Tracker

Contract Comments				
Section	Hauler	Comment	Response	Action
Definitions - Recyclables – page 5	WM	Please provide Attachment C/list of recyclables to review.	This will be provided in the release version of the RFB.	Included with RFB.
Term – page 5	WM	Would the City be amenable to mutual agreement on extensions?	The City prefers unilateral extensions under the terms and conditions existing at the time that the extension is exercised. However, the City and Contractor can choose to mutually agree upon revisions to terms and conditions (including contract length) at any point during the contract period.	No changes.
3.1.2	WM	What are the City’s 10-year plans for annexations?	The City has four potential annexation areas; however, there are no plans to incorporate these areas at this time.	No changes.
3.1.14	WM	As written, the contract language seems to require new trucks at commencement of contract and again with any extension. Please confirm the City’s intent.	New trucks would not be required if an extension were exercised. The Contractor would be free to swap vehicles from other operations as needed to maintain the maximum vehicle age.	No changes.
3.1.15.1	WM	The current contract offers a 10-gallon can as the smallest size option. Has the City chosen to replace this with a 13-gallon cart (assuming there is such a size available for automated collection)?	Yes. The City intends to replace the 10-gallon cart with a 13-gallon cart.	No changes.
3.1.15.2	WM	Form 2a Bid Schedule provides for 15 and 25 yard containers, however Section 3.1.15.2 is void of such reference. Will the City update Section 3.1.15.2?	The City doesn’t require 15- and 25-yard containers.	Form 2a has been revised.
3.1.15.3	WM	Ownership reverts to the city, did you intend just carts? Clarifying just carts would be best from cost perspective since detachable and roll-off box inventory is substantial.	No. All Containers are covered by this provision.	No changes.
3.1.20	Republic	<p>Will the City entertain revising the language in the second sentence of the third- to-last paragraph and insert an additional sentence to read as follows:</p> <p>“In the event substantially equivalent service is provided by the Contractor through the employment of non-striking employees on any day during the course of a labor disruption, the Contractor is entitled to reduce the amount of the performance fees that otherwise would be due on a pro-rata basis, determined by the percentage of Contract service provided to Customers on that day. The Contractor’s right to reduce the amount of performance fees pursuant to this section shall be subject to the City’s right to approve such reduction, which approval shall not be unreasonably withheld, delayed or conditioned.”</p> <p>This will allow the Contractor to exercise its right to reduce performance fees, if service levels are maintained</p>	The pro-rata concept is fine, provided that the contractor has the means to accurately assess and document route coverage during these events.	Change accepted with some revision.

Appendix E – Industry Review Comment Tracker

3.1.20	Republic	<p>In addition to the above request, will the City be willing to include the following new paragraph at the end of the section:</p> <p>“Any Strike Contingency Plan or other information communicated by the Contractor to the City pursuant to this section shall be maintained in confidence by the City to the maximum permissible extent under applicable law.”</p> <p>Strike contingency plans are confidential information, the disclosure of which could operate to the disadvantage of both the City and the Contractor. This language should be added so that the plan maintained by the City is held in confidence to the maximum permissible extent.</p>	This is acceptable.	The Contract has been revised.
3.1.27	Republic	<p>Language should be added that provides that title to Hazardous Waste and other hazardous materials included in any waste received by the Contractor does not pass to the Contractor. Will the City entertain adding this language as a new fourth (next to last) paragraph?</p> <p>“Title to and liability for any Hazardous Waste, or for other materials or substances that are either restricted from disposal or would pose a danger to collection crews (including but not limited to any household Hazardous Waste and small quantity generator Hazardous Waste, special waste, and radioactive material) or the environment and that are included with any materials collected under this Contract by Contractor despite The City’s and Contractor’s attempts to prevent the inclusion of such materials shall not pass to Contractor, but shall remain with the party from whom such Hazardous Waste or any such other materials or substances is received.”</p>	This is acceptable.	The Contract has been revised.
3.1.27	Republic	<p>Contactor should be permitted to engage in recovery of recyclable materials, consistent with the Interlocal agreement with the County. Will the City entertain adding this language as a final paragraph of this section?</p> <p>“Garbage collected by the Contractor may be processed to recover recyclable material, provided that the residual is disposed in accordance with The City’s Interlocal Agreement with King County as it currently exists as of the Date of Execution of this Contract or as thereafter amended, or as otherwise directed by The City in writing, and the Contractor receives prior written approval from the City of the Contractor’s procedures and policies for diverting Garbage for processing. In the event the Contractor elects to haul Garbage to a private processing facility, the Contractor shall charge the Customer no more than the equivalent Garbage disposal fee at a King County Disposal System transfer station, or such other disposal fee as the City reasonably directs the Contractor to use in writing, and shall charge hauling fees no higher than provided for in Attachment B.”</p>	This is acceptable, with some revision.	The Contract has been revised.

Appendix E – Industry Review Comment Tracker

3.2.2.3	Republic	<p>Will the City entertain clarifying ‘properly packaged’ with respect to used motor oil?</p> <p>The Contractor shall collect properly packaged used motor oil from Single-Family Residence Customers. Used motor oil is not properly packaged, and the Contractor has no obligation to collect it, if any one of the following is true: 1) the oil was not packaged in a leak proof, plastic jug or bottle, securely sealed with a screw-cap; 2) the packaged oil contained substances other than used motor oil; 3) the packaged oil leaks in any way; 4) the Container is not properly labeled with the Customer’s name and address; or 5) there is spillage at the Customer location that is not caused by the Contractor’s employees. Should the Contractor reject used motor oil for any of these reasons, a tag outlining the reason for rejection shall be left with the oil.</p>	Yes, preparation instructions will be located on the list of recyclables included with Draft Contract Attachment C.	Included with RFB version of Draft Contract.
3.2.4.3	Republic	<p>Language should be added that would allow Contractor to charge for wait times or use of specialized Contractor equipment in cases where containers are not accessible. Will the City entertain adding language at the end of the second paragraph of this section, the following sentence, and include allowance for such charges in Attachment B:</p> <p>“Customers with hard-to-access Containers requiring the Contractor to wait for Customer Container relocation or requiring Contractor’s use of specialized equipment for Container relocation may charge those Customers additional access fees and/or hourly fees consistent with Attachment B.”</p>	Agreed. The City currently has a time-per-minute rate that is derived from the hourly truck and driver rate on Form 2a.	The Contract has been revised.
3.2.4.3	Republic	<p>Will the City allow the Contractor to charge for extra collections for Multifamily and Commercial customers and not to exempt? Can the last paragraph of this section be changed to read?</p> <p>“Multifamily Complex and Commercial Garbage Customers may request extra collections, and shall pay for such extra collections an additional amount proportionate with their regular monthly rate for the extra collection service provided by Contractor.”</p>	Agreed.	The Contract has been revised.
3.2.5.2	Republic	<p>Will the City consider adding language that would allow Containers for Recyclables to be rejected if they contain non-Recyclables or Excluded Materials? Please consider adding the following language to this section:</p> <p>“The Contractor may decline to collect Recyclables if the Container in which they are placed by the Customer contains Excluded Materials or other materials that do not conform to the definition of Recyclables or that do not meet Specifications.”</p>	Yes, subject to the contamination tagging protocols agreed to by the City and Contractors.	The Contract has been revised.
3.2.9	WM	Form 2a Bid Schedule does not differentiate between commodity types for temporary containers, however Section 3.2.9 states the rate will include disposal or processing for Recyclables or Compostables. Should the rate be the same whether service is for Garbage, Recyclables or Compostables?	The City only provides temporary <u>garbage</u> service through this contract. Customers may use the vendor of their choice for temporary recyclables or compostables.	

Appendix E – Industry Review Comment Tracker

3.3.1	WM	Can the City please clarify customer service expectations in light of city assuming billing responsibilities? Will the City handle all customer billing inquiries and Contractor required to therefore handle only service requests?	The Contractor will handle all customer service and billing inquiries. The City will work with the Contractor to develop thresholds for when the City needs to be involved in resolving billing issues.	
3.3.2.1	WM	Will the City consider removing the requirement to provide notifications and access through text? Currently, our systems do not have such capabilities due to legalities related to obtaining customer consent.	Yes, if your company cannot provide this function, please note this as a contract exception in your bid.	No changes.
3.3.2.4	WM	This section requires ASA of less than 30 seconds yet Section 3.3.4.1. (3) References less than 20 seconds. Please clarify the City’s desired standard?	20 seconds.	Conflict has been corrected.
3.3.4.1	WM	(1) Since Contract is City-billed, how does the “billing summary” referenced differ from the monthly summary provided in the City download process?	The billing summary is expected to summarize and not duplicate the download. The download formatting is specific to the City’s billing system requirements and is not in report format.	No changes.
3.3.4.1	WM	(11) References “potential Customers that are in non-compliance with the City’s mandatory collection requirements” yet because there is no cancellation for bad pay, everyone will be in compliance. Is the City requiring a list of bad debt customers? If so, at what term - 30-days past due? 60-days? 90-days? Or at reduction to the lowest service level and sent to collections? Please clarify the City’s request for information on attempts to retain the customer and last date of service in light of the mandatory (non-cancellable) service	This is an additional check to identify any potential customers that are not in compliance with mandatory collection on the assumption that drivers on the street may notice some non-compliance situations that may not be otherwise noticed by the City. This is expected to be a relatively rare occurrence and has no affect on how the City bills for the service or “terms” for bad debt.	No changes.
3.3.4.2	WM	(6) We do not record serial numbers for carts and containers. Would an annual report of Containers by size suffice?	Yes.	The Contract has been revised.
4.2.1	WM	In order to provide the City with the most financially attractive rates upon the commencement of the new contract, would the City consider an annual compensation escalator better aligned with haulers’ costs? For example, Consumer Price Index for All Urban Consumers: Water and sewer and trash collection services (CPI)(Series CWUR0000SEHG)	No.	No changes.
4.2.1	Republic	Will the City entertain changing the Annual PI Modification to 100% of Water/Sewer/Trash Index, provided by the Bureau of Labor and Statistics. This index more accurately reflects the true costs being incurred by the Waste Industry.	No.	No changes.
4.2.2	Republic	Will the City allow language to be added to permit Contractor to pass through increase in fees for Compostable collection and disposal? Please consider adding the following as a separate paragraph at the end of this section: “If the Contractor is required by the City or other governmental authority to use Garbage disposal or Compostables processing sites other than those being used at the initiation of this Contract, the Contractor shall submit a detailed proposal for the adjustment of the rates to reflect any additional cost or savings to the Contractor. The Contractor’s rates pursuant to this Contract in such a case shall be adjusted so as to pass through any resulting additional costs incurred by or savings to the Contractor. The City and Contractor	The proposed language is acceptable, but note that the language does not allow Compostable tipping fees as a pass through. It only applies to instances where the City or other governmental authority directs the flow of Compostables to a different facility than initially used by the Contractor.	The Contract has been revised.

Appendix E – Industry Review Comment Tracker

		agree to negotiate in good faith and to make any changes to the rates to accomplish a pass-through of any such costs or savings.”		
7.1	Republic	<p>Will the City entertain language to assist in Contractors enforcement of its exclusive rights? Please consider revising the first paragraph of the section to read:</p> <p>“The Contractor shall be the exclusive provider with which the City shall contract to collect Garbage, Compostables and Recyclables placed in designated Containers and set out in the regular collection locations within the City Service Area. The City, by ordinance or other regulation, or by other effective means, will preclude the provision by any third party of any of the services to which the Contractor has the right by this Contract to be the exclusive provider. When asked by the Contractor, the City shall make a good faith effort to protect the exclusive rights of the Contractor under this Contract; however, the City shall not be obligated to instigate, join in or contribute to the expense of litigation to protect the exclusive rights of the Contractor unless the City’s institution of or joinder in such litigation is necessary for the protection of such rights. The Contractor may independently enforce its rights under this Contract against third party violators, including, but not limited to, seeking injunctive relief, and the City shall use good faith efforts to cooperate in such enforcement actions brought by the Contractor (without obligating the City to join any such litigation, except for as provided in this paragraph). Such efforts may include but not be limited to cease and desist letters, assistance with documenting violations, and other activities as City staff time reasonably allows.”</p>	<p>The City has limited resources to police private recycling services or to ascertain whether a particular load of materials is classified as recyclables or garbage. The City has worked with the current contractor over the years to address issues as they have arise and is comfortable with the current level of effort required to administer the City solid waste system. The draft contract language envisions a continuation of this level of commitment.</p>	No changes.
GENERAL COMMENTS				
	HAULER	COMMENT	RESPONSE	ACTION
	Recology	<p>Would the City consider conducting this process as a request for proposals (RFP) rather than as a request for bids (RFB)? An RFB process indicates price as the only priority. Often times the lowest price comes at the potential expense of service quality and diversion programs. Recology is 100% employee owned and takes great pride in providing a high level of service to our communities and contributing to a world without waste. As such, we seek procurement processes and municipal partnerships that value service components such as a local call center, in-city customer service/retail options, and robust recycling programs.</p> <p>King County has established an aggressive diversion target of 70% by 2020. Currently, no city within the county diverts that level of material. In order to achieve this goal, any selected proponent would need flexibility to develop</p>	<p>No. The City believes all of the bidders in this area are qualified and fully capable of meeting service standards. The City wants to provide the most cost effective service possible to the residents and businesses of Auburn.</p>	No changes.

Appendix E – Industry Review Comment Tracker

		creative solutions that are not typically accommodated by an RFB. As such, we are comfortable at this point stating that it would not make business sense for Recology CleanScapes to participate in a process that is 100% weighted on price.		
	Republic	Finally, we would be remiss if we did not add our concerns regarding the City’s decision to pursue a RFB vs. an RFP. Republic is proud of the partnerships that we have created with the communities where we provide service. Regrettably an RFB does not allow us the opportunity to fully develop a valuable partnership with the City of Auburn. We strongly feel that we provide a service that can, and should, be differentiated from our competitors and we would appreciate this opportunity.	No. The City believes all of the bidders in this area are qualified and fully capable of meeting service standards. The City wants to provide the most cost effective service possible to the residents and businesses of Auburn.	No changes.
	Cedar Grove	What technical qualifiers, protocols, field testing, and documentation will be required by the contractor’s processor to ensure that items they accept adequately compost within their systems?	None. Collection contractors make their own arrangements for composting, including the use of subcontractors. The City’s primary interest is the collected material be composted to the extent possible and in compliance with all local, state and federal regulations.	No changes.
	Cedar Grove	By having unlimited free recycling with the actual cost of collection and processing embedded into the commercial rate, the garbage rate becomes inflated and the utility and state refuse tax apply to the combined cost of both services. Commercial compostables and recyclables are non-taxable items. How does the City view charging a tax on recyclables?	Comment noted. The State is currently reviewing certain aspects of embedded commercial recycling and those results will inform future program design.	No changes.
	Cedar Grove	How will the City remedy the unfair market situation for private commercial haulers and processors that have to compete with “no cost”, “free” or subsidized recycling and compostables services under a bundled services system?	Comment noted. The State is currently reviewing certain aspects of embedded commercial recycling and those results will inform future program design.	No changes.
	Cedar Grove	Please explain what authority the City has to regulate the collection and market rates for source-separated commercial recyclables? When embedding costs, the City is essentially regulating open market commercial rates.	Comment noted. The State is currently reviewing certain aspects of embedded commercial recycling and those results will inform future program design.	No changes.
	Cedar Grove	Please assess whether bundled rates result in payment of fees by ratepayers for services that they may not receive or need? For example, if a business chooses to use a private recycler for their recycling collection, they must still pay a higher garbage rate to the contracted hauler even though the business is not using the contracted hauler’s service.	Comment noted. The State is currently reviewing certain aspects of embedded commercial recycling and those results will inform future program design.	No changes.
	Cedar Grove	Can the City permit a commercial customer to opt out of the City’s bundled program should they choose a different contractor to collect source-separated recyclables? These customers would pay the garbage rates less the embedded cost of recycling, thus allowing for private haulers to compete for commercial recycling services in the City of Auburn.	Comment noted. The State is currently reviewing certain aspects of embedded commercial recycling and those results will inform future program design.	No changes.
	Cedar Grove	We suggest that the City of Auburn request a detailed break out for the “cost of services” within Attachment B of the contract in each of the following areas of service in order to properly assess the true cost components for solid waste services:	Some of this information may be derived from Form 2b of the RFB, although Form 2b requests a snapshot of first year costs and unlikely to exactly match (and often doesn’t) the internal financial forecasts Bidders use to generate bid rates. The City is specifically requesting rates for a	No changes.

Appendix E – Industry Review Comment Tracker

		<ul style="list-style-type: none"> a. Costs of commercial and multi-family garbage b. Costs of commercial and multi-family recycling c. Costs of commercial and multi-family compostables d. Costs of single family garbage e. Costs of single family recycling f. Costs of single family organics 	bundle of services and is not evaluating bids on individual cost components. While interesting, the breakout of cost-of-service data is not directly germane to the bid evaluation.	
	Cedar Grove	<p>We understand the City is not a party to subcontractor contracts between haulers and third party processors. However, based on a ten year contract and an ever evolving industry, how would the City address a change of law that impacts an industry and is out of the haulers' or third party processors' control?</p> <p>Examples of regulation changes impactful to all parties:</p> <p>May, 2012 KC Heath Dept. Permit Changes</p> <ul style="list-style-type: none"> • Regulates inbound contamination for the first time • Cedar Grove restricted to 5% contamination by volume in inbound feed stocks (or approx.. 1.5% by weight) <p>July, 2014 WA State Dept. of Ecology, 173-350-220 Composters' Rule Changes</p> <ul style="list-style-type: none"> • Film plastic in compost is now regulated at <0.1% by wt. (for unrestricted use) • Total contamination must be less than 1% by weight (including film plastic). Since these circumstances lie outside of the control of the compostables processor, Cedar Grove requests changes to proposed contract for any unforeseen industry or permit adjustments that may occur within the upcoming contract term. 	Cities have not historically been privy to the terms and conditions of contracts between the City's contractors and the contractor's vendors, and thus can not determine how cost increases are addressed in those contracts. The City assumes that its hauling contractor has evaluated likely composting costs increases or decreases over the term of the contract and has priced their proposed rates accordingly to match the risks inherent in their subcontracts. Further, cities do not know to what extent their contractors have balanced the financial tradeoffs between increasing the speed of collection versus increasing contamination monitoring. The City's contract currently puts all risk (and reward) for assessing this balance on the contractor without City involvement. This is not expected to change, unless a major change in the industry occurs or the City directly contracts for compost processing services.	No changes at this time.
	Cedar Grove	<p>What is the City going to do differently regarding inspections for contamination in light of the recent King County Superior Court decision in <i>Bonesteel v. City of Seattle</i> on this issue? In that case, the court voided certain City of Seattle laws dealing with waste inspection as unconstitutional because the methods of enforcement violated citizen privacy rights. Like the process described in the RFB here (monitoring program, tagging, etc), Seattle's approach involved the hauler's determination of contamination to a percentage threshold. The court in <i>Bonesteel</i>, however, noted that Seattle could not explain how its hauler inspectors could compute the percentage limit without searching through a resident's garbage bags.</p> <p>This decision is yet another example of a change in law that impacts the haulers and processors in this industry. We would respectfully request that third party processors along with haulers be allowed to request a rate adjustment in Section 4.3 when, or if, these detrimental changes occur. If contamination cannot be effectively monitored and enforced, the only party that can logically be held responsible is the person causing the</p>	The City will work with its contractor to implement legal and effective screening programs. Some revisions may be required from time to time and the City expects to work with the contractor to periodically review and improve contamination monitoring and feedback to customers.	No changes at this time.

Appendix E – Industry Review Comment Tracker

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